IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 17.10.2006

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

A.S.No.690 of 1992
and
C.M.P.No.12482 of 1992

P.Manickam .. Appellant/Defendant

vs.

Selvaradha Ammal .. Respondent/Plaintiff

Prayer: This Appeal has been filed against the decree and Judgment dated7.7.1992 passed in O.S.No.27/1991 on the file of the Principal Subordinate Court, Cuddalore.

For Appellant : Mr. M.V.Muralidaran

For Respondent : Ms. Hema Sampath

JUDGMENT

This Appeal has been preferred against the Decree and Judgment passed in O.S.No.27/1991 on the file of the Principal Subordinate Court, Cuddalore.

2. The suit is for specific performance of the contract entered into between the parties under a sale agreement dated 29.1.1988 for a sum of Rs.32,400/-. On the date of agreement itself the plaintiff has paid a sum of Rs.30,000/- towards advance and only a sum of Rs.2,400/- remains to be paid towards the balance amount. The plaintiff is always ready and willing to perform his part of the contract. The plaintiff demanded the Defendant to execute the sale deed, after receiving the balance of sale consideration of Rs.2,400/-, on many occasions. But the Defendant is evading to execute the sale deed. The plaintiff apprehends that the Defendant, with ulterior motive, is postponing the execution of the sale deed. Hence the suit for specific performance of the contract.

3. The Defendant in his written statement would contend that the suit property belongs to the Defendant, but there was no agreement of sale entered into between the plaintiff and the Defendant on 29.1.1988 in respect of the suit property. The allegation that the Defendant

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agreed to sell the suit property to the plaintiff for a sum of Rs.32,400/- within three years from the date of agreement is false. The alleged agreement is forged one. The Defendant has not signed in the said agreement. The said agreement has been concocted by the plaintiff's husband Chakkaravarthy. The Defendant knows the plaintiff's husband. The Defendant is at Madras for the past thirty years. The Defendant used to bring plaintain in lorry from Madras to Vazhisothanaipalyam Village and sell it on whole sale basis. In that connection there has been dealing with the plaintiff's husband and the Defendant. In fact the Defendant has acted as a broker for the supply of plaintain. There has been misunderstanding between the Defendant and Chakkaravarthy, husband of the plaintiff, in respect of payment of commission. The friendship between the plaintiff's husband and the Defendant came to end in the year 1987 and there has been no connection between them thereafter. One Balaraman and Dhanasingh said to have attested the suit document have not attested the same. The Defendant has not signed in the said document. The aforesaid persons are close friends of Chakkaravarthy, the husband of the plaintiff. Chakkaravarty misused his position as a friend and retained the original deed of sale and did not return the document in a dishonest manner. Dhanasingh is the elder brother of Chakkaravarthy. Chakkaravarthy got the original sale deed from the Defendant representing to make arrangements for getting loan from the Government or Bank. The plaintiff was never ready and willing to perform his part of the contract. The allegation that the Defendant has been evading to execute the sale deed is false and it is not arisen for consideration at all. Chakkaravarthy wants to grab at the property of the Defendant. The plaintiff has no cause of action to file the suit. Hence the suit is liable to be dismissed.

4. On the above pleadings the learned trial Judge has framed three issues and on the basis of the documentary and oral evidence has decreed the suit as prayed for giving two months time to execute the sale deed. Aggrieved by the findings of the learned trial Judge, the Defendant has preferred this Appeal.

5. Now the point for determination in this Appeal is whether Ex.A.1-sale agreement, dated 29.1.1988, in respect of the suit property entered into between the plaintiff and the Defendant is genuine?

6. The Point:-

6(a) To prove Ex.A.1-sale agreement P.W.1 to 3 were examined on the side of the plaintiff. P.W.1 is the husband of the plaintiff and P.W.2 is one of the attestors to Ex.A.1-sale agreement and P.W.3 is the scribe of Ex.A.1. Defendant would deny his signature in Ex.A.1, but he has not taken any steps to get handwriting expert's opinion to show that Ex.A.1 does not contain his signature. On the other hand P.W.2 & 3, who are one of the attestors and scribe respectively to Ex.A.1, have proved the execution of Ex.A.1 by the Defendant in favour

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of the plaintiff. The fact that the plaintiff was not examined in this case will not derive us to a conclusion that Ex.A.1 is concocted document as contended by the Defendant. The learned trial Judge, as per Section 73 of the Evidence Act, has compared the signature of the Defendant in Ex.A.5-Acknowledgment card of Ex.A.4-Notice and compared the same with that of the disputed signature in Ex.A.1-Sale Agreement and has come to a definite conclusion that both the signatures belong to one and the same person viz. the Defendant.

6(b) Yet another important circumstance which lead to the conclusion in favour of the plaintiff is that as to the execution of Ex.A.1-Sale Agreement by the Defendant in favour of the plaintiff is that the original sale deed in respect of the suit property under Ex.A.2 has been handedover to the plaintiff who has produced the same before the trial Court. According to the Defendant, the plaintiff had obtained the original sale deed under the pretext of raising a loan for the Defendant from a Bank. If it is so, as rightly observed by the trial Court in its judgment that Ex.A.2 would have been handedover to the Bank Manager for getting the loan and not to the plaintiff. The very fact that Ex.A.2-original sale deed for the suit property has been handedover to the plaintiff itself will go to show that only for the purpose of Ex.A.1-sale agreement, the original sale deed under Ex.A.2 for the suit property has been handedover to the Defendant by the plaintiff. Further there is no document produced on the side of the Defendant to show that he made demands to the plaintiff for return of Ex.A.2-original document from the plaintiff. The learned trial Court has correctly observed in its judgment that there are some minor discrepancies in the oral evidence of P.W.2 & 3, but they are trivial in nature which in no way affect the case of the plaintiff. Further Ex.A.3 will go to show that even on previous occasions the plaintiff has after executing an agreement for sale in respect of the suit properties in O.S.No.259/1988 subsequently raised a defence similar to one raised in this case and in that suit also the contention of the Defendant has been turned down and the said suit was also decreed against this Defendant. Under such circumstances, I do not find any reason to interfere with the findings of the learned trial Judge in O.S.No.27/1991 on the file of the Principal Subordinate Court, Cuddalore, which does not suffer from any illegality or infirmity.

7. In the result, the Appeal is dismissed confirming the Decree and Judgment passed in O.S.No.27/1991 on the file of the Principal Sub-Court, Cuddalore. There is no order as to costs. Consequently, connected CMP is also dismissed.

ssv

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To,

1. The Principal Subordinate Judge,
Cuddalore.

2. The Record keeper, VR Section,
High Court, Madras.

ONE CC TO M/S HEMA SAMPATH SR 49073

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